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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos

Addendum

Report on the mission of the Special Rapporteur on the issue of commercial sexual exploitation of children to Kenya (25 August to 1 September 1997)

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Introduction

1. At the acceptance by the Government of Kenya, of her request to visit the country, the Special Rapporteur on the sale of children, child prostitution and child pornography, visited Nairobi, Mombasa and Malindi from 25 August to 1 September 1997, to study the issue of commercial sexual exploitation of children in Kenya.

2. The Special Rapporteur would like to take this opportunity to express her appreciation for the cooperation and assistance extended to her by the Government of Kenya, which enabled her to meet with representatives of relevant governmental and non-governmental sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner.

3. The Special Rapporteur would also like to thank the United Nations Development Programme (UNDP) in Nairobi for the logistical and substantive support provided in connection with her mission. She also acknowledges the assistance extended to her by the United Nations Children's Fund (UNICEF) Regional Office for East Africa.

4. During her visit, the Special Rapporteur met with high-level officials in the Ministries for Foreign Affairs and International Cooperation, Home Affairs and National Heritage, Culture and Social Services and Tourism, as well as in the Attorney-General's Chambers and the Office of the President. Prior to her mission, the Special Rapporteur also had the occasion to meet with the Attorney-General. The Special Rapporteur also met with law enforcement officials, representatives of non-governmental and children's organizations, tourist associations, the Regional Child Rights Representative of UNICEF and the International Programme for the Elimination of Child Labour of the International Labour Organization (ILO/IPEC). The Special Rapporteur also had the occasion to visit the Juvenile Law Court, the Approved School for Girls, as well as a number of children's homes where she interviewed child victims of sexual exploitation.

5. A list of selected persons and organizations with whom the Special Rapporteur met during her mission is annexed to the present report.

6. The Special Rapporteur wishes to underline that the discussion on the subject of the present report is intended as a study of a phenomenon that affects most countries of the world, whether developing or developed. The Special Rapporteur chose to visit Kenya in order to study commercial sexual exploitation of children in a large urban centre like Nairobi, as well as in a coastal area with a view to exploring the impact of tourism on sexual exploitation of children. In addition, the Special Rapporteur was interested to study any initiatives already undertaken in Kenya, both by Government and non-governmental organizations, to combat existing problems.

I. COUNTRY SITUATION

7. According to Human Rights Watch, over 40,000 Kenyan children are living on the streets; 38 per cent of all children are sexually abused by an adult or a family member by the age of 18 and 74 per cent of those abused report severe

damage or long-lasting consequences later in life; 11 per cent of sexual abuse is perpetrated by a stranger, 29 per cent by a family member and 60 per cent by a person known to the victim. 1/

8. It is estimated that urban population in Kenya grows at an annual rate of up to 45.7 per cent annually, resulting in population explosion in the cities, which is in direct correlation to deteriorating living standards, overcrowding and high unemployment.

A. Causes

9. One of the major causes of marginalization of children in society, which creates street children, school drop-outs and consequently leaves children vulnerable to sexual exploitation, both commercial and otherwise, is poverty. In 1994, the National Participatory Poverty Assessment Report showed that 43 per cent of the Kenyan population lived in absolute poverty, and the country's per capita income was $372; 58 per cent of Kenyan population is below the age of 18.

10. The increasing trend of rural-urban migration within the country has contributed to the growth of slums in urban areas. Slums have very limited facilities for migrants, from employment to sub-standard living conditions and few recreational facilities. As a result of overcrowding, slums provide an ideal breeding ground for criminality, aggression, violence, abuse and neglect, from which children often suffer most. It was stated that over 50 per cent of the urban population in Kenya lives in unplanned, slum areas, which do not receive any governmental funding.

11. At the same time, specialists working with children in the streets were of the opinion that poverty per se is not the only cause, although it certainly aggravates matters, but that abuse or rejection within families is the primary reason for the increase in street children and the consequent vulnerability to commercial sexual exploitation. The breakdown of traditional family values and the culture of African extended family were frequently cited as most compelling causes leading to a moral disintegration of society, again making children more vulnerable to sexual exploitation. Children escape physical and sexual abuse from home and from dysfunctional families affected by unemployment, substance abuse and criminality, and end up in the streets. Cultural practices in some communities (such as Nanyuki/Mt. Kenya) where families send children out to earn money through prostitution are also compounding the problem of sexual exploitation of children, but poverty is once again the underlying factor.

12. In addition, the increasing number of single parent families, and in particular female-headed households, results in children having to supplement the family income or being left to their own devices. In view of the scarcity of employment opportunities, girl children might often be pushed to engage in commercial sex, with or without the knowledge of their parents or family.

13. It should also be mentioned that discrimination on the basis of gender in some situations impacts negatively on the higher vulnerability of girls to sexual exploitation. Practices rooted in tradition tend towards giving preference to the education of boys if not enough money is available to send

all children to school and towards perpetuating marriages for girls at an earlier age than for boys. In particular in recent times, it appears that early marriages are used by parents for financial gains in some parts of the country.

14. Due to economic constraints and housing shortages, in particular in the suburban areas around Nairobi, families are forced to live in very confined conditions, often in only one room. In such an environment, children are exposed to sexual behaviour between parents and older siblings from a very young age. This leads to either moral acceptance of sexual acts at a very young age or alternatively leaves children extremely vulnerable to sexual abuse by family members, mothers' boyfriends and stepfathers, all of which culminate in children wanting to escape from home or being more open to sexual exploitation.

15. The widespread and increasing existence of street children in Kenya is certainly one pointer for the prevalence of child prostitution. The characteristic that commercial sexual exploitation of children takes in these circumstances is of a particularly sad nature, since street children are frequently forced to practice "sex for survival", in other words selling their bodies for food, clothing, money, school fees, drugs or alcohol. Once in the streets, children easily get caught in a cycle of substance abuse which necessitates money and which in turn leads to offering their bodies for sexual services, which then again increases the desire for drugs in an attempt to overcome the traumatic physical and psychological consequences of commercial sexual exploitation.

16. At the same time, and as recognized by relevant Government authorities in Kenya, children do not always enter the commercial sex industry on their own. Persuasion or deception by adults, threats or violence are used by adults to lure children into being exploited. Therefore, any undertaking seeking to prevent commercial sexual exploitation of children has to target all levels of society and past initiatives of a primarily ad hoc nature must be replaced with pro-active strategies for the long-term. 2/

The impact of HIV/AIDS in Kenya

17. Virtually every sector of Kenyan society has felt the impact of HIV/AIDS, which has caused a decrease in life expectancy of between 5 and 10 years and an increase in child mortality. The Kenya National AIDS Control Programme (KNACP) estimates that between 750,000 to 1 million Kenyans are now living with HIV/AIDS. However, the majority of cases go unreported and many persons living with the virus are not aware of their status, so that the true nature of the problem is very difficult to ascertain. Variations occur between urban and rural areas, with HIV positivity found in 10 per cent to 11 per cent of urban adults and over 4.5 per cent in rural adults. One very disconcerting factor is that 49 per cent of women receiving prenatal care in health centres in Kenya are diagnosed HIV+.

18. Through the National AIDS Control Programme, the Government of Kenya has begun to implement projects designed to achieve a reduction in the rate of HIV transmission, to help communities care for persons living with HIV/AIDS and children orphaned due to AIDS, to implement policies to protect such persons

and give women greater control over their sexual self-determination. These projects are effected through a focus on prevention, targeting especially youth and high-risk groups. School children are given HIV/AIDS education which is integrated into their school curricula. Non-governmental organizations working in the field of HIV/AIDS are supported in their efforts to expand their outreach activities and support is offered to the private sector to help protect their employees and their families, to train service providers in the high prevalence areas of the country and to give information and condoms to high-risk groups. Kenyan planners and policy makers have been provided with information in order to effect appropriate interventions. The Special Rapporteur is pleased to note that religious organizations have also been involved in the programme. Most importantly, however, and as emphasized by officials of the United Nations Development Programme, the link between poverty and HIV/AIDS must be explored in the Kenyan context so that appropriate strategies to combat the epidemic can be devised.

19. Although over 80 per cent of Kenyans are aware of HIV/AIDS to some degree, there remains a great need to induce behaviour change and provide correct information. Community members should be involved in counselling on HIV/AIDS prevention and in providing care to persons living with HIV/AIDS and to children orphaned by AIDS.

20. One particularly disturbing trend related to the increase in persons living with HIV/AIDS in Kenya, is the mistaken belief by many that having sex with young children would reduce the possibilities of HIV-infection. This results in the so-called "spiral effect", which manifests itself in progressively younger children being used for purposes of commercial sexual exploitation. Another equally dangerous conception is that having sex with an infant cures a person affected by HIV/AIDS. In some of her discussions, the Special Rapporteur was informed that there had been cases reported in which infants under 1 year old had been raped or sodomized due to such false beliefs. These incidents only highlight the priority attention that should be accorded to HIV/AIDS education at all levels of society.

B. Characteristics

21. Commercial sexual exploitation of children in Kenya, a developing country with rapid population growth and continuing economic and social changes, is a phenomenon shrouded in relative secrecy, conditioning the strategies to eradicate and prevent the problem. The lack of a sound legal basis in Kenyan national legislation further compounds the problem. This important issue is discussed at length in the next chapter.

22. Under-reporting is another major characteristic of commercial sexual exploitation of children in Kenya and seems largely due to non-existent or ineffective response mechanisms to provide support, protection and assistance to victims. An important aspect of prevention would be to educate the public to detect signs of potential or existing sexual exploitation of children, to its consequences, to its prevalence, legal implications and types of sexual abuse. Under-reporting causes the notable lack of any specific data so that an objective assessment of the phenomenon cannot be undertaken. This is a

very serious concern of the Special Rapporteur since no effective and appropriate nationwide strategies to combat and prevent the problem can be developed without knowing its real extent.

23. Although during her visit the Special Rapporteur was not able to evaluate the extent of the problem, she was informed that there is no doubt that commercial sexual exploitation of children was escalating at great speed and that immediate intervention, as well as long-term preventative strategies must be undertaken.

24. The age of child victims of commercial sexual exploitation in Kenya is estimated to range from 9 to 17 years, with the majority of children affected between 13 to 17 years. School girls, young girls who have migrated from rural communities, especially those who work as unskilled domestic helpers, school boys who need money for school fees, "second-generation" prostitutes, beach boys and school drop-outs are all categories of children who fall victim to commercial sexual exploitation. 3/

25. It was interesting for the Special Rapporteur to note that some contend that the sectors of society most affected by the dangers of commercial sexual exploitation of children are non-Nomadic and economically and socially more advanced families. Their higher consumption needs and increased demand for goods, which often leads them to urban centres in search for more gainful employment, frequently result in the family not being able to sustain itself. Consequently, and as already mentioned above, family structures are broken down and difficulties within the household lead to the neglect of children. In particular, the Central and Western provinces, the North-East and Eastern areas of Kenya, as well as the Coastal Provinces, are said to be most affected by social transformation. Such phenomena are less observed within more traditional, Nomadic African groups where the extended family still provides a solid support network for children.

26. The main "modes of operation" by which commercial sexual exploitation takes place in Kenya are through pimps, madams and middlemen, parents or other family members, in brothels and massage parlours, in the streets, in nightclubs, bars and in discotheques. Runaway or "throwaway" children or school drop-outs and other children living in the streets are frequently engaged in "sex for survival", that is to say they are forced to turn to prostitution for their survival and engage in individual prostitution, "operating" without pimps or madams. The Special Rapporteur was also informed of the existence of commercial sexual exploitation of children, through loosely organized networks, in rich, private houses known as "Mbwa kali", which refers to the "Beware of fierce dog" signs posted outside the gates. It is suspected that in many private houses illegal activities involving children are taking place but access by law enforcement officials on mere grounds of suspicion is not allowed and police are wary to enter. Therefore, any activities inside "Mbwa kali" houses, mainly owned by rich Kenyans, expatriates and foreigners, are very difficult to control.

27. From testimonies of child victims of prostitution, the Special Rapporteur was informed that the price for sexual services for children varies vastly from K Sh 20.00 which a 9-year old street girl received for letting older men sodomize her, up to K Sh 500.00 for sex with a 17-year old girl

working in a bar. Karen, 15, told of being raped by a man in the street who then offered her K Sh 100.00 for the second time. This is how she entered prostitution.

28. In Nairobi, specific nightclubs are known to provide adult prostitutes for clients but the prostitution of minors in such establishment is more difficult to detect since it is largely carried out "behind the scenes" and through contacts only. At the same time, some street workers have identified certain clubs where children in prostitution are known to operate from. In the streets, Koinanga Street and Kenyatta Avenue are places where children, predominantly girls, apparently as young as 7 to 9 years old, can be found offering sexual services. Many of the children working in the streets are accompanied by their mothers or older siblings who also engage in prostitution. Another characteristic appears to be that most brothels are managed by female pimps or madams and that the majority of recruiters are also women.

29. In Mombasa and Malindi, and in other coastal tourist areas, the attention of the Special Rapporteur was drawn to children who offer sexual services along the beaches, mainly so-called "beach boys" and in small bed and breakfasts where maids or other domestic workers are offered for sexual services by owners and managers. Local authorities pointed out that since the Government is becoming increasingly aware of the extent of the phenomenon, beaches are now starting to be monitored and surveillance is being carried out around bars and massage parlours where prostitution takes place in popular tourist areas.

30. During her mission, the Special Rapporteur noted that information on the use of children in the production of child pornography was scarce and difficult to obtain. It appeared, however, that such productions were concentrated in populated and/or tourist areas, such as in Nairobi, Mombasa, Malindi and Watamu. It was contended that any child pornography material that is available comes into Kenya from abroad and that production within Kenya is unknown. The Government, through the Film Licensing Board, censors all types of films that come to the country, but the Special Rapporteur would like to caution that the private nature of distribution and viewing of materials makes such censorship difficult. The increased access to computer based information networks has led to an increase in child pornography, with appropriate legislative remedies increasingly difficult to implement. Relevant strategies to combat such problems must be considered even if the phenomenon is not rampant or not recognized as common in Kenya.

31. It was also reported that children are being trafficked internally from rural to urban areas by intermediaries, or at times, by loosely organized crime networks, for the purpose of prostitution. Many trafficked children originate from impoverished and remote rural areas where they and their family may not grasp the true nature of the risk and consequences involved in accepting the help of a mediator, "family friend", "boyfriend" or "future husband" for finding allegedly "domestic" work in urban centres. Once the children find themselves in unfamiliar areas, without their families, they become dependent on the mediator and are easily controlled and manipulated. As in other countries, the victims themselves or their families are deceived

by false promises of obtaining house or bar work and, therefore, "voluntarily" go with the intermediaries. Similarly there are cases of children being trafficked into Kenya.

32. Another characteristic of commercial sexual exploitation in Kenya is that apparently refugee children, originating mainly from the Sudan and Somalia and often marginalized in Kenyan society, are particularly vulnerable to exploitation and abuse.

C. Profile of perpetrators

33. A wide range of individuals at all levels of society contribute to the existence of the phenomenon. Intermediaries, family members, service providers, customers, tourists, community leaders, government officials and the business sector may all be implicated in the growing problem, be it through indifference, ignorance of the consequences suffered by children or through the active perpetuation of the phenomenon.

34. The customers exploiting children commercially for sexual purposes are both Kenyans and foreigners. Clients include local Kenyans from all social levels, migrant workers whose families have stayed behind in rural areas, expatriates, university students, tourists, paedophiles and adults who falsely believe that children are safer from HIV/AIDS infection.

35. The Special Rapporteur was also informed that tourist agents, both local and foreign, have been known to direct and guide tourists to specific areas to find child prostitutes. Therefore, while it appears that the phenomenon of sex tourism and sex tour operators has not yet reached the alarming scales in place in many South-East Asian countries, Kenya is a growing tourist destination and as such, the laws and measures to protect children from this kind of sexual exploitation must be strengthened.

36. In "Juvenile Injustice, Police Abuse and Detention of Street Children in Kenya", the international non-governmental organization Human Rights Watch charges Kenyan law enforcement officials with physical abuse, monetary extortion and sexual abuse of street children. 4/ Instances of street girls being sexually propositioned or even raped by police in order to avoid arrest or to be released from custody have been reported. When in custody, street children are held in crowded police station cells, often without toilets or bedding, with inadequate supplies of food and water, and are frequently beaten by police in the station. The Special Rapporteur was especially concerned to learn that children are held in the same cells as adults and are, therefore, doubly vulnerable to abuse. Although Kenyan law requires that a person arrested without a warrant be brought before a magistrate without delay, street children often remain locked-up for long periods, which may extend to weeks, without any review of the legality of their detention by the authorities. They are then released back onto the streets or are brought to court. Bearing in mind the already vulnerable situation of street children, the Special Rapporteur is very disturbed at these allegations implicating government officials in the abuse, including sexual exploitation, of the very children that they are mandated to protect.

II. THE LEGAL FRAMEWORK

A. International

37. Kenya ratified the Convention on the Rights of the Child on 30 July 1990 and one of the objectives of the Kenyan Constitution is explicitly "to implement the provisions of the United Nations Convention on the Rights of the Child".

38. By acceding to the Convention, Kenya, in accordance with article 34, undertook to protect the child from all forms of sexual exploitation and sexual abuse and committed itself to taking all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

39. The Special Rapporteur regrets that the Government of Kenya has not yet submitted any report to the Committee on the Rights of the Child, the expert body which oversees the implementation of the provisions of the Convention. The initial country report fell due as early as 1 September 1992, in accordance with article 44 of the Convention. Consequently, the first periodic report has also never been submitted before the Committee.

40. In this connection, when the Special Rapporteur made inquiries regarding this matter, she was shown a draft of the initial report prepared by the Children's Department of the Ministry for Home Affairs, in cooperation with non-governmental organizations, which had been submitted to the Office of the Attorney-General for approval in 1993. It appeared that the Children's Department was not informed that this report had never reached the Committee on the Rights of the Child, in Geneva. Furthermore, the Special Rapporteur was informed that the Children's Department had already initiated the preparations of the first periodic report. Such a situation is regrettable and the Special Rapporteur urges the Government of Kenya to comply with its reporting obligations under the Convention without delay.

41. Kenya is not yet a signatory to the African Charter on the Rights and Welfare of the Child. During her mission, the Special Rapporteur was informed that a Cabinet memorandum urging ratification of the Charter was pending approval before the Council of Ministers, the Ministry for Home Affairs and the Attorney-General.

B. National

42. The Kenyan legal system is composed of acts of Parliament, principles of common law and equity and African customary law, in that order of hierarchy in the application of laws, as regulated by section 3 (1) of the Judicature Act.

The Kenyan Constitution has enabled the existence of a plurality of personal laws by recognizing the diverse and heterogenous nature of the Kenyan community, which effectively allows for the application of customary personal laws in matters such as adoption, marriage, divorce and burial insofar as it is not repugnant to justice and morality or inconsistent with any written law. 5/

43. The Children and Young Persons Act (cap. 141) is the leading statute providing "protection and discipline" for "children, juveniles and young persons" under the Laws of Kenya, and establishing juvenile law courts and their procedures. With regard to the definition of a child, which is crucial to determine the extent to which law will seek to protect the children, the Act (Sect. 2) defines a "child" to mean any person under the age of 14; a "juvenile" is defined as a person under the age of 16 and a "young person" denotes a person who is 16 or more and under the age of 18 years. Furthermore, customary law, which prevails as personal law for most Kenyans, does not set a definite age at which children enter majority age, since attainment of majority, according to customs and traditions, is closely linked not to the age of the child but to initiation rites, physical development and generally prevailing customary norms. (UNICEF Situational analysis, draft chapter 3.2) 6/

44. It appears that the lack of a uniform definition of a child in national legislation, has indeed created gaps in the protection of the rights of persons under 18 years in Kenya. It is of particular concern to the Special Rapporteur that children between the ages of 16 and 18 years are excluded from the rights and protections stipulated in the Children and Young Persons Act, contrary to Kenya's obligations under the Convention on the Rights of the Child. For example, there exists no legal protection for girls who enter marriage with parental consent. Kenyan law recognizes different types of marriage, including that of children below the age of 18, so long as they have parental consent.

45. The Special Rapporteur notes with great concern that there is a complete absence of legislation addressing commercial sexual exploitation of children in the Laws of Kenya. This was also confirmed in her meeting with the Director of the Children's Department, who also pointed out that there are currently 64 different legislative provisions concerning children. In discussions held with the Special Rapporteur it was argued that the absence and scarcity of information and data on commercial sexual exploitation in effect undermined the possibility of determining a necessity for specific legislation regulating this problem. Furthermore, the Special Rapporteur observed that the legal debate on commercial sexual exploitation of children has been hindered by conceptual difficulties on how to define the terms sexual exploitation, sexual abuse and commercial sexual exploitation in the Kenya context.

46. In many discussions, the attention of the Special Rapporteur was drawn to the fact that, in the African context, programmes dealing with sexual exploitation of children should not be limited only to commercial sexual exploitation but should also include sexual abuse of children, such as incest, family abuse and rape. It was emphasized that such an inclusive, wider

approach would ensure more effective awareness-raising, as well as a change in behaviour and attitude towards the protection of children more generally. It was also stated that the need to widen the scope of the focus was to avoid rendering programmes restrictive and ambiguous to the extent of excluding the African context. This is an important point, bearing in mind that one of the reasons for children ending up in commercial sexual exploitation is the sexual abuse they suffer from at home.

47. Below, the Special Rapporteur has highlighted some of the existing relevant legislation on cases of commercial sexual exploitation of children.

48. The Penal Code (cap. 63) provides for a series of offences against morality, many of which could be perceived as constituting child sexual abuse and/or commercial sexual exploitation of children. These offences include rape, attempted rape, abduction of girls under 16 years of age, defilement, procurement of any girl or woman to have unlawful sex in Kenya or elsewhere, prostitution or the exploitation of prostitution of others, frequentation of a brothel; procuring defilement by threats, fraud or administering drugs, permitting or conspiring in defilement. The Code also provides for the offences of fraudulent pretence of marriage and marriage with dishonest or fraudulent intent. 7/

49. The Penal Code, furthermore, protects boys aged below 14 years from indecent assault (Sects. 162-165) and protects girls from being detained in premises for immoral purposes (Sects. 151 and 166-167). Protection from trafficking and illicit transfer abroad is provided for in Sections 254-266, referring specifically to the protection of female children from being trafficked for purposes of prostitution or other immoral purposes.

50. Section 181 of the Penal Code states that "it is an offence if anyone by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematography films or any other obscene objects, or any other object tending to corrupt morals".

51. Although some of the above provisions may afford protection to children from commercial sexual exploitation, there exist inconsistencies in legislation, which are of a very serious nature, and the law has seemingly not been rationalized to recognize the vulnerability of children as opposed to adults (Lecture by Ms. Victoria W.M. Kattambo, Senior Principal State Counsel, etc.) Such imbalances can be found, for example, in the prescribed sentences for rape and defilement which involve children below the age of 14 years. Rape is punishable with life imprisonment accompanied by hard labour, with or without corporal punishment. Defilement of a girl under 14 years, moreover, is punishable by a maximum of 14 years in prison and with no minimum sentence (Sect. 145 of the Penal Code). It appears that the law perceives rape to be a more serious offence than defilement which involves a child below 14 years of age. In this context, the Task Force on the Laws Relating to Children recommended that the law should be changed to reverse the severity of sentence, as between rape and defilement and proposed that there should be a minimum sentence in defilement cases of hard labour for 15 years together with corporal punishment.

52. Additionally, the Special Rapporteur was informed that legislation prohibiting the possession and distribution of pornographic materials and establishing a Censorship Board to vet foreign films coming into Kenya, has been enacted.

53. It is regrettable to note that although child prostitution is considered a serious form of child labour, it has not featured prominently in Kenyan labour legislation, policies and programmes aimed at eradicating or reducing economic exploitation of children. 8/ The Special Rapporteur was informed that there exists a notable effort on the part of the Government to regulate the employment of children as tourist guides and also to regulate their employment in settings which are more likely to expose children to the dangers of commercial sexual exploitation, such as bars, hotels and restaurants. As one expert contends, however, unless relevant regulations are enforced and developed to encompass express provisions on child prostitution in labour laws, the required protection for children may not be achieved.

54. Under the Act, a child or juvenile is considered to be "in need of protection or discipline" if he or she, inter alia:

(a) falls into bad associations or is exposed to moral or physical danger (Sect. 22 (c));

(b) frequents any public bar or gambling houses (Sect. 22 (g));

(c) if he or she has been sexually assaulted; or is a member of the same household as a person who has been convicted of a sexual offence against a child or juvenile or of an offence involving bodily harm (Sect. 22 (f)).

55. In such cases, the procedure under the Act for safeguarding the child or juvenile involves the removal of the child from the place of danger to a safe environment by any authorized officer who has reasonable grounds to believe that the child or juvenile is in need of "protection or discipline" (Sect. 24 (i) and (2)). The Act defines "a place of safety" to mean any mission, institution, hospital or other suitable place ... and where no such place is available "a juvenile remand home or a police station".

56. In this context, a gap in the national legislation governing the rights of the child is the absence of legal reporting obligations of cases concerning children who have been or are, or are in danger of, being sexually exploited. It appears that currently only a "social obligation" exists for children's officers, doctors, teachers and other persons who have the care, custody or control of children, to report abuses of children to relevant investigative authorities. The absence of a mandatory reporting provision seems to be a major gap in Kenyan law and must be addressed. In addition, in sensitive cases involving commercial sexual exploitation and organized crime links, it may be necessary to find ways of protecting those who provide vital information leading to the rescue of a child victim under a victim and witness protection scheme.

57. Most importantly, however, the Special Rapporteur is very concerned that a number of weaknesses within the machinery for protecting children from

"moral dangers" arise directly from the ambivalence of certain legal provisions. A very glaring example which leads to iniquitous practices against children is the fact that response mechanisms under the law do not distinguish between children in need of protection and those in need of discipline. It is imperative, however, that both categories of children be treated differently, especially when the question arises whether to place the child in a juvenile remand home or approved school or police station. Therefore, as some experts argue the concept of a "place of safety" for a child who is a victim of sexual exploitation or abuse becomes questionable. 9/

58. The Special Rapporteur would also like to emphasize that children victims who are inadequately protected by loopholes in legislation or through ineffective implementation of the laws, are treated as criminals with little recourse than return to the vicious circle of abuse and exploitation at a constantly increased level of risk to their very existence. Equal treatment of child victims and offenders also increases the level of stigmatization of the child victim when attempting to reintegrate into society.

59. Although the above protective laws relevant to commercial sexual exploitation of children are rather inconsistent and fragmented, they could provide some important protections to children if they are well publicized and effectively implemented by relevant authorities and are used to their fullest potential, at least until a new comprehensive children's legislation is enacted. It appears, however, that the detection and reporting of the offences in question are often undermined by not only the secrecy and lack of data surrounding the problem of commercial sexual exploitation of children, but also by the lack of awareness of existing safeguards, the lack of resources, as well as the social stigma attached to the offence.

60. Under Section 124 of the Evidence Act of the Laws of Kenya (cap. 80), the burden of proof in an offence of sexual exploitation of children rests with the prosecution and the law requires that the testimony of a child be corroborated by other material evidence. This very often gives rise to insurmountable difficulties in successfully prosecuting cases involving children.

61. From the above it also becomes obvious that the fragmented nature of applicable laws relating to commercial sexual exploitation and the absence of any specific provisions addressing this problem significantly lowers the effective implementation of any protection and hinders appropriate intervention by relevant authorities.

62. Even more generally, with regard to laws protecting the rights of the child, the coexistence of Kenyan statutory, religious and customary laws has resulted in conflicts of interests between crucial actors, such as parents, guardians, religious leaders and secular authorities, with children often caught amidst.

63. During the visit of the Special Rapporteur to Kenya, a draft Children's Bill, elaborated by the Attorney-General's Task Force on Laws Relating to Children, was before the National Assembly, pending enactment. The Special Rapporteur was informed that this enactment was delayed as a result of the governmental elections which took place in December 1997, but it is intended

that the Children's Bill will be passed before parliament by the end of February 1998. On a parallel level, the Task Force on Criminal Law was also attempting to incorporate strengthened provisions for the criminalization and punishment of commercial sexual exploitation of children.

64. The proposed Children's Bill would merge a number of Acts which regulate specific protections granted to children, including the Adoption Act, Age of Majority Act, Children and Young Persons Act, Guardianship Act and Legitimacy Act, into one Children's Act. The Bill also seeks to address some of the concerns raised in this chapter by, inter alia, defining a child as a girl or boy aged below 18, and only making one further distinction with regard to the child "of tender years", that is aged below 10. By recognizing all persons aged below 18 as children, the Bill attempts to regulate activities, such as early marriages and child labour, so as to ensure that all relevant laws and policies conform with the set minimum age.

III. THE GOVERNMENT

65. One of the most significant constraints related to the effective protection of children in Kenya appears to arise from the lack of high-level coordination amongst the many governmental ministries that provide services for children in different circumstances. In a very honest self-assessment, it was recognized that "there is no fixed and effective system in the coordination among concerned agencies both on the Government and private sector sides. The existing system and structure are not responsive to nor are they meeting the requirements of the actual problem. The past undertakings concentrated on the solving of immediate problems and were more reactive than pro-active". 10/ Another important consideration is that the Government of Kenya must recognize the existing social and health situation that Kenya is facing in order to be able to effectively combat the related problems.

66. The Children's Department of the Ministry for Home Affairs and National Heritage, operating under the Children and Young Persons Act (cap. 141), is the State custodian of all laws relating to children in Kenya and is charged with all programming related to the implementation of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, to children in need of special protection and the care givers. The Department is responsible for sensitizing civil society on the rights of children and manages public institutions for the rehabilitation of children in need of "protection and discipline", including 12 approved schools, one children's home in Nairobi and juvenile remand homes across the country.

67. The Special Rapporteur was pleased with the understanding and openness she encountered in her meetings with the Director of the Children's Services Department at the Ministry for Home Affairs and National Heritage. In these discussions, it became clear that the Government has started to recognize the existence of commercial sexual exploitation in Kenya, as well as the need to take immediate measures to combat the phenomenon. It was emphasized that the new legislation on children must reflect a number of central concerns in this area, which should then also form the basis of future concrete Government strategies.

68. It was rightly emphasized that children in prostitution must be clearly distinguished from adult prostitution since the child can never, under any circumstances, be considered the perpetrator of the offence but only the victim. In the same vein, it was recognized that children victims of commercial sexual exploitation and abuse are in need of professional rehabilitation and care, which is often very costly, so that the value of prevention could not be overemphasized. Any efforts to overcome the phenomenon and programmes for children in prostitution should be desegregated on the basis of gender in view of the differences affecting girls and boys involved in prostitution, including in the modes of recruitment, methods of operation, as well as coping mechanisms. Revictimization of the child in the care of responsible authorities should be avoided at all costs through training and sensitization.

69. The Special Rapporteur is pleased to note that the Government of Kenya had adopted the following principles in attempting to combat the problem of commercial sexual exploitation of children in Kenya:

(a) The total elimination of the involvement of children of both sexes under 18 years of age in the commercial sex business;

(b) The prohibition of luring, threats, exploitation and acts of violence in the operation of the commercial sex business;

(c) The imposition of punishments to all persons taking part in involving children in the commercial sex industry and punishment of any officials who are neglecting, or choose to ignore, their duty to enforce compliance with relevant policies, laws, rules and regulations, in particular those attempting to protect the rights of children. 11/

70. Government officials of the Children's Department in the Ministry for Home Affairs also explained to the Special Rapporteur that several strategies have already been undertaken to address the root causes of sexual exploitation of children and to prevent the phenomenon from increasing. The Children's Department informed the Special Rapporteur that it was drawing up a directorate of non-governmental organizations dealing with child labour, including child prostitution, with a view to coordinating the preparation of a training manual for grass-roots organizations to fight child labour and child prostitution. The Special Rapporteur considers that identifying the partners at grass-root level with whom to implement strategies is a very important first step in addressing the problem.

71. Such steps also included the initiation of projects and policies focusing on rural development strategies, poverty alleviation and raising of living standards of the rural poor, which are expected to reduce migration from rural to urban areas (the District Focus For Rural Development Strategy). Another strategy employed by provincial administrations in an effort to prevent young girls from falling prey to the dangers of commercial sexual exploitation is to discourage early marriages through education and awareness-raising campaigns. Similarly, the Ministry of Education is finally allowing young girls who are pregnant to continue schooling. The Special Rapporteur hopes that other such practices which are in violation of the

obligations contained in the Convention on the Rights of the Child would be remedied immediately to accord children all their rights.

72. Furthermore, the Children's Department has recently established a Crisis Desk within the Ministry for Home Affairs where complaints and cases concerning child abuse and neglect, as well as commercial sexual exploitation of children can be directed. At the same time, the Children's Services Department should employ field officers across the country with increased powers of intervention in cases of child sexual exploitation, in order to monitor the situation effectively and to break down barriers such as the "Mbwa kali" or "fierce dog" myth.

73. A National Coalition on Child Rights and Child Protection has been established under the auspices of the Children's Department one year ago, which comprises a coalition of governmental and non-governmental organizations in an attempt to identify the various ongoing activities and programmes for children victims. Such networking was considered essential in order to coordinate efforts, avoid duplication, rationalize resources and ensure maximum benefits. A subsidiary network for matters concerning the girl-child has also been established, in implementation of one of the critical areas of concern elaborated in the Beijing Declaration and the Platform for Action adopted by the Fourth World Conference on Women. Matters of concern addressed within this forum are early marriages, female genital mutilation and other harmful traditional practices affecting the health of girl children, such as the ritual enslavement of young girls amongst some ethnic groupings in Kenya, as well as child prostitution.

74. The Ministry of Education has formulated and implemented the "8-4-4" system of education. The purpose of this system is to prepare students to acquire skills with an aim of self-sustenance and equal opportunities for both boys and girls in the labour market. The same Ministry has also allowed girls who become pregnant and are willing to go back to school after giving birth to do so. The Special Rapporteur was also informed that the Teachers Service Commission has been known to dismiss teachers who have sexually exploited their pupils with promises of high marks and monetary gain.

75. With regard to health and sex education in schools, the Special Rapporteur was informed that currently, under the topic "social education and ethics", children receive some information related to morality, but this is not considered sufficient to have any preventative effect with regard to sexual behaviour. A "family life education" awareness-raising campaign, targeted especially at girls, is planned to be included in school curricula but, according to the Director of the Children's Department, the Catholic Church in Kenya has opposed this programme. It appears that the Catholic Church is willing to participate in the rehabilitation of child victims and in the healing process but not in some preventative actions, such as sex education in schools.

76. With regard to sale and trafficking of children across Kenyan borders for the purpose of commercial sexual exploitation, the Special Rapporteur was not provided with adequate information to address the issue, generally because of a general lack of data on the subject of her study. The Special Rapporteur would like to emphasize, however, that the role of immigration authorities in

monitoring traffic in children should be explored and that the need for very specific legislation on transborder trafficking be evaluated. With regard to rural-urban migration, however, there are potential dangers for girls who are brought to cities for domestic work to become involved in commercial sexual exploitation and sexual abuse. It is for these purposes that the Kenyan Government has entered into cooperation with the International Programme for the Elimination of Child Labour (IPEC) of the International Labour Organization (ILO) and developed a programme to combat the danger that female domestic workers are subjected to.

IV. THE CRIMINAL JUSTICE SYSTEM

77. As the Special Rapporteur had already stated in her past reports (A/51/456; A/52/482), children are subjected to revictimization at many points in the criminal justice system. This is also true under the Kenyan situation.

78. Most cases of sexual exploitation are not reported and one of the major causes of such under-reporting is the fact that since the majority of child sexual exploiters are men, male police officers tend to take reported cases very lightly. 12/ Furthermore, the practice of law enforcement agents, the majority of whom are men, to consider child abuse cases as largely "domestic matters", is reflected in the reporting and registering of such cases by the police and has minimized the importance of developing suitable places of safety for child victims.

79. One matter of concern raised by non-governmental organizations was that cooperation with law enforcement officials was rendered very difficult by the high turnover of responsible officers within the police force. The Special Rapporteur was informed that the former Police Commissioner had, in cooperation with the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN), agreed to form a juvenile unit within the police force so that every police station would have at least two officers specialized in children's and family matters. It appears that with the change of Commissioner and without any institutional continuity, this initiative has never been implemented. At the same time, the Special Rapporteur notes that the Kenyan police force seems to have rather limited resources and personnel. This reality notwithstanding, the Special Rapporteur would urge the Kenyan police force to accept the need to mainstream the protection of children as an integral part of a national strategy for crime prevention and control and urges the police to cooperate with non-governmental organizations and other children's experts with a view to ensuring that the Kenyan law enforcement officials are well-informed, well-equipped, and well-sensitized to deal with children's concerns effectively.

80. In discussions with the Deputy Commandant of Criminal Investigations Training College of the Kenyan police, it was noted that police indeed lacked training and sensitization programmes in how to address children victims. The training manual for law enforcement officials needs to be revised, in particular with a view to including informative sections on the rights of the child and on issues such as commercial sexual exploitation of children. A networking attempt between police officers in Nairobi to assist each other with relevant information in the case of a child victim had apparently been

made but without great success. In this context, the Special Rapporteur would recommend that a directory of all non-governmental organizations working with children victims of sexual exploitation be provided to all police officers, giving detailed information on the programmes available for children and the addresses of children's homes and shelters.

81. It was also mentioned that the current legislation which does not distinguish between a child in need of discipline and a child in need of protection renders the work of law enforcement officers difficult. At the same time, the need was expressed for the Kenyan police force to foster public confidence generally through closer and more open contacts with civil society. Such cooperation could, for example, be built through regular community police forums meetings or community policing projects.

82. In cases where children are brought to court, they are processed through the juvenile justice system. The Children and Young Persons' Act provides for children's cases to be heard in special juvenile courts, whose jurisdiction extends to both criminal matters and non-criminal "protection or discipline" matters. The Juvenile Court, at the level of a Resident Magistrate's Court, handles all matters concerning children in Kenya. There is only one Juvenile Law Court in Kenya, which is based in Nairobi, and in all other regions, the Resident or District Magistrate's Court hear cases of children and young persons on designated days.

83. According to the Penal Code, when a child is brought before a court of law in a matter involving his protection or discipline, the court is empowered with a wider range of options which include a supervision order, committal to fit persons, to approved schools or to approved societies willing to take care of the child. The court is also empowered to order that the child be returned to his parent or guardian and may order his parent or guardian to execute a bond to exercise proper care and guardianship.

84. Pending final adjudication and disposition of their cases, street children are committed by courts to temporary detention in remand institutions or juvenile remand homes, if they are aged 15 or under, or to adult remand prisons, for children who are at least 14 years old. They may stay there for indefinite periods of time, sometimes even years. There are no limits under Kenyan law on the amount of time that a person can be detained in a remand institution, and in remand centres; there are hardly any educational or recreational activities for children.

85. From remand, children may be committed by courts to approved schools, juvenile remand homes, or, in the case of older children, in prisons. Although the Special Rapporteur welcomes the alternatives to custodial treatment which are provided for under the Children and Young Persons Act, such as rescue centres established by churches, non-governmental organizations and other private institutions, she is particularly concerned that magistrates still tend to overuse institutionalization as a remedial measure for street children. The existing approved schools are few in number and are not sufficiently and adequately equipped in terms of personnel and other relevant services required for effective rehabilitation of children victims of commercial sexual exploitation, especially since it is the Special

Rapporteur's understanding that approved schools are intended, in the first place, to be correctional institutions for juvenile delinquents.

86. In reply to her query on this matter, it was indicated to the Special Rapporteur that once a child victim of commercial sexual exploitation was considered to be in need of protection and care, the first attempt to rehabilitate the child would be to commit it to an approved school or remand home in order "to heal from such activities" and then released for reintegration into society. Yet, aside from the fact that the Special Rapporteur is concerned that children victims of commercial sexual exploitation, under the Children and Young Persons' Act, are treated equally with juvenile delinquents and are assigned to approved schools, where there are no specific psychological rehabilitation programmes for child victims, another concern is that there exists only one Approved School for Girls in the whole country. The Special Rapporteur had the occasion to visit the Kirigiti Approved School for Girls in Kiamu, Central Province, where 252 girls between 10 to 18 years are placed from all over the country, many of whom have been committed for the "offence of being in need of protection" or for the "offence of being a child in need of care and discipline". The manager of the school agreed that ideally different institutions should exist for child victims and for child delinquents. She pointed out, however, that whilst all children in the school received equal treatment, there were also possibilities for individual counselling, for example, for victims of sexual exploitation and abuse. It seems evident, however, that only one such institution cannot possibly cater effectively for all female child victims in need of protection and juvenile delinquents in need of discipline at the same time.

87. The Special Rapporteur was also concerned at reports that street children are frequently tried in regular courts as adults, without the special protection provided to children under Kenyan law. Judicial authorities have also been criticized for not fully appreciating the severity of sexual abuse or exploitation, which is evident from court decisions in which child sex offenders appear to have been treated leniently. 13/ The Special Rapporteur noted, however, that the proposed Children's Bill proposes an increased number of juvenile courts with an increased capacity to detect child abuse and an improvement in "vetting" magistrates with specialized knowledge for children's courts.

88. The Special Rapporteur was also informed that there exists no formal nor informal training for members of the judiciary, including justices and magistrates, on juvenile issues (whether concerning juvenile complainants or defendants). The Special Rapporteur, therefore, urges the Department of Justice to carry out formalized and detailed courses for justices and magistrates relating to all issues concerning children in courts. In this context, the Special Rapporteur would like to draw attention to her report to the General Assembly last year (A/51/456) which contained a special focus on the criminal justice system and could be used as a basis for any judiciary training on the rights of the child.

V. A CASE STUDY OF THE COAST PROVINCE: MOMBASA AND MALINDI

89. The coastal area of Kenya, including urban centres such as Mombasa and Malindi, possesses a cultural, ethnic and geographic richness and diversity

which also lends the phenomenon of commercial sexual exploitation of children particular characteristics, different from Nairobi. The Special Rapporteur also chose to visit the coastal area in order to study the impact of tourism on commercial sexual exploitation of children and to identify possible measures to prevent any further exploitation.

90. Children from all parts of the country converge in the coastal area, especially in Mombasa and Malindi, hoping to earn a living from the influx of foreigners. Here the children are rendered doubly vulnerable since, on one hand, they are subjected to sexual exploitation by some tourists but, on the other hand, they are subject to violence and harsh treatment by police officers who are ordered to "clean" the streets for the tourists. Yet it was emphasized that tourism is not the primary reason for children to enter into commercial sexual exploitation and other ventures to assure their survival but that once they are in the streets, having left home for the many reasons described earlier, the tourist industry becomes a major attraction. According to the Mombasa Coast and Tourist Association, only 1 per cent of tourism in the coastal area is oriented for sex.

91. According to the Mombasa Coast and Tourist Association, out of 827,000 international tourists visiting Kenya per year, approximately 70 per cent travel to Mombasa and the majority of arrivals are families, honeymooners or pensioners, with only a small percentage of individuals travelling alone. In the face of these statistics, it could be deduced that the tourist industry in the coastal area of Kenya is not primarily sex-oriented. Nevertheless, in view of the large number of street children and curio vendors, the potential for increased commercial sexual exploitation of children must be recognized and preventative strategies put into place without delay.

92. In fact, the Special Rapporteur was pleased to note a high degree of awareness of potential dangers in discussions with the Chairman of the Mombasa Coast and Tourist Association (MCTA). The MCTA has carried out awareness-raising campaigns concerning the rights and protection of children with hoteliers, tour operators and caterers and has asked them to report to the Association any detection of minors in their establishments. At the prompting of the Special Rapporteur, the Chairman, in cooperation with the Ministry of Tourism, was going to address a circular letter to all tourism managers in the region to remind them of their obligation to monitor that no minors under 18 be allowed in their establishments. The MCTA has also requested the Government to provide land for building a regulated "beach boys market" in order to control better the type of merchandise sold and activities undertaken by beach boys, the building of which would be funded by the MCTA. Generally, the MCTA also expressed its willingness to cooperate with the Children's Services Department and their officers in any future initiatives to eliminate commercial sexual exploitation of children.

93. In most discussions, it was mentioned that homosexual prostitution and the use of boys in commercial sexual exploitation of children was not traditionally practised in Kenya but that foreign influences through tourists have given rise to this phenomenon. In particular young boys who sell curios on the beaches in tourist areas, so-called "beach boys", are mostly targeted by paedophiles and male tourists looking to buy sexual services. To address

this growing concern, the Ministry of Tourism and Wildlife established a Kenya Beach Management Programme. Under this programme, the beach boys are organized into a "Beach Operators Association", with about 6,000 members. It coordinates the selling of curios but at the same time seeks to prevent the curio vendors from being used as contact points by tourists for either drugs or sexual services by children. The Association also represents its members in negotiations with provincial authorities and the Mombasa Coast and Tourist Association.

94. It was also mentioned that tourists who come to Kenya on package tours and stay in cheaper hotels have more opportunities to enter into closer contact with locals and, therefore, attract local commercial sex workers and nomadic street children who move from one tourist area to another searching for ways to survive.

95. Malindi has certain characteristics not in common with the other coastal areas like Mombasa and Lamu. Malindi has a visibly large Italian community. Italian-owned hotels, restaurants, bars and nightclubs proliferate in Malindi. Thus, many Italian tour operators and tourists are attracted to the area. The expatriate community consequently has very close contacts to both local Kenyans, as well as to the tourists, and it has been reported that such contacts are also used for providing children for sexual services to tourists. Furthermore, in view of the higher number of young, single tourists that travel to Malindi, demand for sex services also appears greater.

96. Another characteristic of commercial sexual exploitation of children in Malindi, were female domestic helpers who worked in "guest cottages" mostly owned by expatriates but managed by local caretakers. It was reported that the caretakers at times photographed the domestic workers and sent their photos to guests abroad so that they could "select their girl" before arrival. Another incentive provided for the domestic helpers to engage in other services than housework is the approximately monthly salary of K Sh 4,000 to 5,000/month that they are sometimes offered. In comparison, a local lower-level government official would earn approximately K Sh 3,000/month. The Special Rapporteur was also informed of "hostels" for girls, situated around Malindi, which provide an ideal setting for sexual exploitation of girls and which should be carefully monitored.

97. Also in the coastal area, in Malindi and Mombasa it was reported that organizers of traditional dances for tourist entertainment used children and school drop-outs in their shows and that tourists often requested the services of performers after the dances for sexual purposes. The Children's Department in Nairobi was of the opinion, however, that such exploitation had been detected and a stop put to it.

98. The Special Rapporteur was also informed that a large number of the coastal population or "mgikenda" are Muslim communities, like in Lamu, which are very closed and difficult to reach. Both children's officers and non-governmental organizations stated that whilst in these communities no commercial sexual exploitation of children has been observed, it appears that the rate of child abuse and exploitation within families is high. In particular, young boys are more exposed to the danger of sexual abuse by

homosexual members of the community, especially since the girls within Muslim families are strictly protected.

99. The International Programme for the Elimination of Child Labour (IPEC) of the ILO has implemented a programme in Malindi which addressed mainly children who work in factories in the region. At the same time, a new programme has been proposed under which recreational centres with counselling facilities and information would be established for children victims of exploitation, sexual and otherwise. The programme aims to enable children in prostitution to get vocational training for alternative sources of income. Other options which could be offered to children in need of rehabilitation and their families would be empowerment training and a credit-lending facility for parents to encourage income-generating activities. The Special Rapporteur considers this an excellent project proposal and encourages its implementation without delay.

VI. NON-GOVERNMENTAL AND COMMUNITY-BASED ORGANIZATIONS

100. The Special Rapporteur was pleased to note that just before her visit a workshop had been held from 13 to 15 August 1997, in Nairobi, organized by the Child Welfare Society of Kenya, and End Child Prostitution in Kenya (ECPIK), bringing together non-governmental organizations and Government to elaborate strategies to "End Child Prostitution in Kenya". In follow-up to the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, participants at this workshop took stock of the existing situation of commercial sexual exploitation in Kenya, reviewed the national legal framework to protect children and agreed on a number of recommendations, many of which are reproduced in this report. Many of the papers presented at the workshop were very useful to the Special Rapporteur in the preparation of the present report. The Special Rapporteur urges all relevant actors to continue cooperating and taking initiatives, such as this workshop, which bring together governmental and non-governmental organizations with a view to formulating very concrete strategies to address the problem of commercial sexual exploitation in Kenya.

101. Another important development after the Stockholm Congress is the initiation of an umbrella organization or a Government/non-governmental organizations coalition referred to as End Child Prostitution in Kenya (ECPIK) which focuses on commercial sexual exploitation of children. In view of the fact that it appears that the Government of Kenya now recognizes the existence of the phenomenon in the country, the next priority is to establish the magnitude of the problem and non-governmental organizations within the coalition are mandated to start collecting data to this end.

102. Another umbrella organization bringing together non-governmental organizations working with street children is the Kenya Alliance for the Advancement of Children (KAAC). At this point, the Special Rapporteur would like to emphasize that whilst networking amongst non-governmental organizations working with children is absolutely essential, one must ensure that it does not become the most overused and underpractised concept existing. During her mission to Kenya, the Special Rapporteur was startled by the proliferation of networks of non-governmental organizations, most of which comprised of the same organizations and working in similar areas. A critical

appraisal of whether and to what extent the existing networks are necessary should be carried out in order to weed out any duplication of efforts.

103. One example of significant and effective cooperation between governmental and non-governmental actors, are the rehabilitation centres for child victims of commercial sexual exploitation that have been set up by the Child Welfare Society of Kenya. Children's and probation officers direct children whom they pick up in the streets and consider in need of rehabilitation to such centres. The "Peace House", with places for 20 to 25 girls, is one of 11 other similar establishments managed by the Child Welfare Society.

104. These rehabilitation centres fill a void within the governmental structures of the criminal justice system which, as already mentioned above, only provide for remand houses and approved schools for children. The Special Rapporteur has, however, already emphasized above the importance of ensuring that children who are victims of sexual exploitation receive appropriate rehabilitation and care, including specialized psychological treatment, in separate institutions from where juvenile delinquents are held.

105. In this context, however, the Special Rapporteur was concerned that, whilst the Government was more than happy to use facilities, such as rescue and rehabilitation centres, managed by non-governmental organizations, there seemed to be no real funding forthcoming from Government to support these projects. Should this be the case, the Special Rapporteur strongly urges Government to redirect financial resources to non-governmental organizations who carry out such important initiatives for the protection of children.

106. The Child Welfare Society is also engaged, in cooperation with the Ministry of Education, in trying to introduce information on the dangers of sexual abuse and exploitation to children in schools through culture and drama festivals, with poems, songs and plays, under the subject-heading of "social ethics". The Special Rapporteur considers this an important initiative, in particular in the absence of comprehensive health and sex education in curricula.

107. The Special Rapporteur was also pleased to learn that the Child Welfare Society of Kenya also trains police officers on children's rights and has produced police training materials, posters and pamphlets for distribution at police stations. Whilst the Special Rapporteur would like to encourage this project, it is essential that such training is carried out systematically and in coordination with the police training college.

108. The Kenya Chapter of the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) has launched a children's legal awareness and assistance programme, not directed exclusively at commercial sexual exploitation, but rather at intervening on behalf of children who come into conflict with the criminal justice system and also informing communities of children's legal rights. In the first instance, such a programme involved establishing contacts with street children who are one of the most vulnerable groups to come into contact with the criminal justice system. It was reaffirmed that street children easily become involved in prostitution, especially for survival. The ANPPCAN Executive Director

emphasized that child prostitution in establishments and purely for financial gain is more limited in Kenya. At the same time, however, he was of the opinion that whilst tourists and foreigners used to constitute the majority of clients of child prostitutes, an increasing trend of local customers is observed. This reversal in trends could be attributed to the false myth that children are free from HIV/AIDS infection.

109. In Mombasa, the Special Rapporteur visited the Grandsons of Abraham Rescue Centre for Boys, which picks up boys from the streets, provides them food and temporary shelter with the objective of reuniting the children with their families. The street boys that pass through the Rescue Centre are between 10 and 16 years old, originate from all parts of the country and, therefore, networks with social and street workers across the nation have been established to locate the families of the boys. Many of the boys in the streets live in gangs, within which sexual abuse by older members of the group may happen. Also, the Director of the Rescue Centre has detected a decrease in the age of street boys and also spoke of initiation ceremonies for new boys that might consist of sexual acts.

110. The Undugu Society, denoting "brotherhood", is one of the most established organizations in Kenya dealing with street children. During the night, the Undugu street and social workers tend to the immediate needs of children in the streets, such as medical assistance and food, and inform the children of the Undugu reception centre from where children, who have come there voluntarily, are sent on to community homes for boys and girls. Another option for older boys is to be placed in "outreach", that is to say that they visit the homes regularly but do not live on the premises. Contact with the families of the children is always made and the situation is evaluated during a home visit to understand reasons for children's departure. The Undugu Society also provides livelihood training for the children and offers non-formal education programmes. For children of 12 years and above, the 4-year basic education programme operated in Nairobi's slum areas is attended by 680 students, whilst the informal sector training programme seeks to improve skills acquired in the basic programme and attaches students to craftsmen and companies for training.

111. Recently, the Society has also launched four new learning centres or "machuma", where 300 children below 12 years of age collect and sell scrap metal pieces on a free market after school. This programme originated from the fact that many young children collected such waste materials and were then exploited because of the meagre prices they could obtain. Such cost-effective micro-projects indeed provide innovative ways for keeping children from falling into the dangers of commercial sexual exploitation.

112. The Special Rapporteur had the opportunity to visit a children's home in Msabaha, near Malindi. The "Children of the Rising Sun" home houses 36 abandoned children between 6 and 16 years of age, most of whom were street children in Malindi. The home was founded by a former street child in 1994 and is supported mainly by the expatriate community in Malindi. The land for the renovated home was donated by a Kenyan hotelier. The Special Rapporteur considers that this is a prime example of how local communities can cooperate to alleviate the plight of street children which benefits tourism since the children are not living in the streets anymore and at the same time, the

children are provided with food, clothing, care, education and with possibilities to find employment.

VII. CONCLUSIONS AND RECOMMENDATIONS

113. From the information gathered during her mission, the Special Rapporteur notes that the Government of Kenya recognizes the existence of the problem of commercial sexual exploitation of children in the country. At the same time, and in view of the ever-increasing number of street children potentially most vulnerable to exploitation, as a first priority an assessment of the extent of the situation has to be undertaken. On the basis of the outcome of a base-line survey, comprehensive strategies to combat the problem and to prevent its increase must be taken without delay. In order to be effective, strategies must be elaborated in close cooperation between Government and non-governmental organizations.

114. With regard to the impact of tourism on commercial sexual exploitation of children in Kenya, the Special Rapporteur is able to conclude that whilst many street children and runaways are drawn to tourist areas, mainly along the coast, it is not tourism in the first instance that causes children to turn to life in the streets. It also appears that exclusively sex-oriented tourism is still rare in Kenya, but the future potential for a drastic increase must be recognized by Government, including the Ministry of Tourism, and preventative measures put in place.

115. Below are some recommendations for action which the Special Rapporteur would urge the Government of Kenya and civil society to study carefully with a view to undertaking some of the suggested actions.

To the Government of Kenya:

(a) Legal

- Submit overdue State Party reports to the Committee on the Rights of the Child;
- Ratify the African Charter on the Rights and Welfare of the Child
- Review chapter V of the Constitution with a view to harmonizing with the Convention on the Rights of the Child;
- Set legal age of majority at 18 years;
- Include specific provisions on prohibiting commercial sexual exploitation of children in Children's Bill;
- Formulate, strengthen and implement national laws, policies and programmes related to trafficking in children;
- Revise penalties concerning rape and defilement;

- Revise laws to ensure as a matter of priority that child-caring institutions cater separately for children in need of protection and those in need of discipline and that remedial and reintegration measures for one are distinct from the other;

- Formulate national laws governing extra-territoriality to prosecute and deter tourist involvement in commercial sexual exploitation of children;

- Increase security and police patrols in areas with hotels, nightclubs, bars and restaurants and entertainment establishments to prevent and intervene in involvement of minors;

- Ensure that the Children's Bill clearly separates criminal from protection cases for children, and that children receive all due process protections required by international law when deprivation of liberty is at stake;

- Institute aggressive and nationwide awareness-raising and education campaigns on the issue of HIV/AIDS for all sectors of society, in particular children, as a preventive measure for the spread of commercial sexual exploitation of children;

- In view of the high prevalence of HIV/AIDS in the country, ensure that free testing clinics and/or facilities, respecting the right to privacy and requirements for confidentiality, are made available throughout the country, especially for children;

- Provide institutionalized and systematic response mechanisms to provide support, protection and assistance to victims and widely publicize the same;

- Ensure institutionalized and continuous sensitization and training programmes for all sectors involved in responding to children in distress, particularly law enforcement officers, judges and social workers;

- Mainstream offences against children as a matter of policy, especially on the law enforcement level.

(b) Non-legal

- As a preventive measure, empower the family, the basic element providing for economic, social and moral security for children, through income-generating activities;

- Sensitize general public, especially parents, teachers and carers, to the dangers of commercial sexual exploitation of children;

- Sensitize law enforcement personnel and members of the judiciary to the facts of commercial sexual exploitation of children, to the international and national legal standards protecting children

from exploitation and on procedures for treating children victims within the criminal justice system;

- Increase percentage of female law enforcement officials to ensure that at least one trained female police officer is assigned to each police station in the country;

- Establish a hotline and contact centres with trained personnel to receive complaints by child victims of commercial sexual exploitation;

- Form cultural committees within communities to discuss advantages and disadvantages of traditional practices, such as early marriages, and to mobilize societal support for the elimination of such harmful practices;

- Institute sex education programmes within school as part of the compulsory curriculum;

- Establish rehabilitation institutions for children victims of commercial sexual exploitation in order to ensure effective recovery and to avoid revictimization by failing to distinguish between children in need of protection and children in need of discipline;

- Conduct research to produce accurate and up-to-date statistical data on all aspects of the problem;

- Make deliberate efforts to retain girl children in schools by providing educational subsidies and bursaries to girls from rural and slum areas;

- Provide an open forum for discussion through workshops, seminars and presentation of case studies, in which all sectors of society, including Government administration, health care, law enforcement, media and education, can exchange perspectives and experiences to find common ground for devising solutions;

- Create public awareness of the plight of children, child rights and the legal penalties applicable to those who abuse or neglect children;

- Raise awareness particularly of the provisions of the Convention on the Rights of the Child, among the public, families, communities, non-governmental organizations and Government workers, to work as a deterrent and also as a tool for empowerment for children;

<u>To non-governmental organizations</u>

- Make concerted efforts to forge a stronger partnership between Government, non-governmental organizations, parents and children themselves;

- Critically appraise the numerous umbrella organizations and networks of organizations working on children's issues with a view to rationalizing efforts and increase focus on specific subject areas;

- Provide a directory of all non-governmental organizations working with children victims of sexual exploitation to all police officers, giving detailed information on the programmes available for children and referral contacts.

Notes

1/ Gladys K. Mwiti, "Effects of sexual exploitation of children", presentation made at the Workshop on Commercial Sexual Exploitation of Children, organized by the Child Welfare Society of Kenya and End Child Prostitution in Kenya (ECPIK), Nairobi, 13-15 August 1997.

2/ Children's Department, "Commercial Sexual Exploitation of Children: Kenya Situation", paper submitted to the Special Rapporteur during her mission, 20 August 1997.

3/ Philista Onyango, "Commercial Sexual Exploitation of Children", African Network for the Protection and Prevention of Child Abuse and Neglect (ANPPCAN), presentation made at the ECPIK Workshop, op. cit. at note 1.

4/ Human Rights Watch, "Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya", New York/Washington, June 1997.

5/ UNICEF, "Situation Analysis of Children and Women in Kenya", draft chapter 3, UNICEF, Nairobi (forthcoming).

6/ The Age of Majority Act (cap. 33) sets the age at which one enters majority at 18 but leaves other Acts to regulate age more specifically for other purposes, such as marriage under the Marriage Act (cap. 150) and punishments under the Penal Code (cap. 63).

7/ Victoria W.M. Kattambo, "The Law and Commercial Sexual Exploitation of Children: Existing Laws, Weaknesses and Gaps", Kenya Law Reform Commission, presentation made at the ECPIK Workshop, op. cit. at note 1.

8/ Ibid.

9/ Ibid.

10/ Children's Department, op. cit. at note 2.

11/ Ibid.

12/ Ibid.

13/ Ibid.

Annex

LIST OF PERSON/ORGANIZATIONS CONSULTED BY THE SPECIAL RAPPORTEUR DURING HER MISSION

Nairobi

Mr. S. Ole Kwallah	Director, Children's Services, Ministry for Home Affairs and National Heritage
Mr. Boaz Kidiga Mbaya	Director, Political Affairs, Ministry for Foreign Affairs and International Cooperation
Ms. F.R. Oeri	Commissioner for Social Services, Ministry of Culture and Social Services
Mr. Mutua	Assistant Commissioner for Social Affairs, Ministry of Culture and Social Services
Mr. Julius K. Kandie	Deputy Solicitor-General, Attorney-General's Chambers
Mr. Dixon R.T. Konya	Magistrate, Nairobi Juvenile Law Court
Ms. Mary A. Owuor	Assistant Commissioner of Police, Deputy Commandant, Criminal Investigations Department Training School, Kenya Police
Mr. Solomon K. Maina	Assistant Secretary, International Organizations and Conferences, Ministry for Foreign Affairs and International Cooperation
Ms. Anne K. Kibaara	Manager, Kirigiti Approved School for Girls, Kiambu, Central Province
Mr. Kimaru Wakaruru	Executive Director, Child Welfare Society of Kenya
Mr. Robert Irungu	Public Relations Manager, Child Welfare Society of Kenya
Mr. Lee G. Muthoga	Chairman, African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN/Kenya Chapter)
Dr. Philista Onyango	Chairman, ANPPCAN Regional Office

Ms. Wambui Njuguna	Regional Coordinator, ANPPCAN Regional Office
Ms. Josephine Muli	Coordinator for Children and Youth, Undugu Society
Ms. Stella Oduori	Coordinator for Community Health, Undugu Society
Mr. Bernard Outa	Information Officer, Undugu Society
Mr. Robert ffolkes	Save the Children Fund (East and Central Africa Regional Office)
Ms. Susan Aird	Training Officer, Kenya Alliance for the Advancement of Children (KAACR)
Mr. Frederick Lyons	Resident Representative, UNDP
Ms. Leah Josaiah	Programme Officer, UNDP
Ms. Kimberly Gamble-Payne	Regional Child Rights Adviser, UNICEF Regional Office for Eastern and Southern Africa

Mombasa

Mr. Robert K.A. Cheruiyot	Provincial Director, Social Services, Coast Province
Ms. Frida Mwangi	Provincial Children's Officer, Coast Province
Mr. Lawrence W. Mwagwabi	Assistant Welfare Officer, Department of Social Services and Housing, Municipal Council
Mr. Evans Mayore	District Social Development Officer
Mr. Najib Balala	Chairman, Mombasa Coast and Tourist Association
Brother Loren Beaudry	Director, The Grandsons of Abraham Street Boys Rescue Center
Ms. Susan W. Kuria	Regional Coordinator, Child Welfare Society of Kenya
Mr. Said Mohamed Rhova	Programme Officer, ILO/International Programme for the Elimination of Child Labour (IPEC)

Malindi

Ms. C.A. Omolo	District Commissioner
Mr. Gideon M. Mung'aro	Chairman, Mombasa Coast and Tourist Association (Malindi Branch)
Mr. Beppe Tirinnanzi	Patron, Children's Home "Children of the Rising Sun" in Msabaha
Mr. Kundan D. Suchak	Patron, Children's Home "Children of the Rising Sun" in Msabaha
Ms. Ellena Chikejo	Officer-in-Charge, Juvenile Remand Home